

SUBJECT: Moving Texas insurance company records out-of-state

COMMITTEE: Insurance: committee substitute recommended

VOTE: 5 ayes--Gavin, Brimer, Counts, Taylor, S. Thompson  
0 nays  
4 absent--Shea, Cavazos, Criss, Warner

WITNESSES: For--Bud Schauerte, vice president, governmental affairs, American General Corp.; Will D. Davis, Texas Legal Reserve Officials Association  
Against--None

BACKGROUND: In 1985 the legislature amended the Insurance Code to allow Texas-chartered subsidiaries of insurance holding companies to move their records and principal offices to another state. The commissioner of insurance must be notified in writing of an insurer's intent to make such a move and may disapprove it within 30 days of being notified. In order for a move to be authorized, the subsidiary has to meet certain requirements, set forth in Insurance Code art. 1.28.

DIGEST: CSHB 843 would specify that the notice requirements of art. 1.28 apply only to relocation of an insurer's principal office and attendant records, instead of "all or any portion of" its records.

An exemption from the notice requirement would be granted to insurers who maintain their principal offices in Texas for moving out of the state such records that are reasonably necessary or convenient to the transaction of its business in another state.

CSHB 843 would allow the insurance commissioner to order an insurer to maintain in Texas or transfer to the state any books, records or accounts of the company if necessary for monitoring the solvency of the company.

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SUPPORTERS  
SAY:

CSHB 843 would tighten current law, which is too broadly written regarding notice to the insurance commissioner about moving of insurance company records out-of-state. The current law could be interpreted to require that companies must give the commissioner 30 days notice any time they want to move any records out-of-state at any time. Such a requirement would be an expensive, time-consuming and counterproductive.

The bill would bring the law more in line with current business practices and the original intent of the Legislature by allowing insurers to move out-of-state a portion of their documents, in connection with their principal office, without prior notice to the commissioner. Companies would still notify the commissioner of their intent to move their principal offices out of the state. Once that notice was given, and no objection was raised, the company could move records connected to its out-of-state office without having to give additional notice.

The bill also would clarify that companies that keep their principal offices in Texas can move outside of the state certain "reasonably necessary" records in connection with their out-of-state business operations without falling under the notice and approval requirements of art. 1.28. It makes little sense for companies that do business in another state to keep in Texas all of their records relating to that business.

The bill would make clear that the commissioner could order a company to maintain its books in Texas if the company's solvency becomes suspect. This provision would maintain the commissioner's ability to review the movement of records out-of-state when circumstances justify such review.

OPPONENTS  
SAY:

This bill could create regulatory problems by removing oversight by the insurance commissioner over the movement of insurance company books, records and documents out of the state. The bill has no provision for notice to the commissioner of where the records are to be kept. An insurance company would only have to claim that certain records are "necessary or convenient to the transaction of its business" out-of-state in order to escape the reporting requirements of the law.

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Under this bill, most of an insurance company's pertinent records could be shifted out-of-state, even if its principal office remained in Texas, before the commissioner had any notice or was able to review whether such a transfer was appropriate.

State insurance examiners would have to travel all over the country to examine records that should have been kept in Texas. Additional personnel would have to be hired to examine out-of-state records that could be easily and far less expensively reviewed if they were maintained in the state.

Current law provides insurance companies with all the latitude necessary to keep certain pertinent books and records outside of the state. Prior to 1985, insurance companies could not keep any of their books and records out of the state. When the Legislature amended the law to accommodate their needs, it retained certain safeguards to prevent abuses. Now the insurance companies want to change the law again to further weaken state oversight of their books and records.

NOTES:

The original version of HB 843 would have allowed "substantially all" of a company's books, records and accounts to be kept outside of the state. The committee substitute would allow a company to locate and maintain out of the state "its principal offices along with attendant" books, records and accounts. In the original version, a company that maintained "less than substantially all" of its books outside the state would have been exempt from the notice requirement, if the records were necessary or convenient to transacting business.

SB 685 by Whitmire, the Senate companion bill, is pending in the Senate Economic Development Committee.